

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	
FM Broadcast Stations.)	
(Park City and Miles City, Montana,)	MB Docket No. 02-79
and Powell and Byron, Wyoming))	RM-10424

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: April 10, 2002

Released: April 19, 2002

Comment Date: June 10, 2002

Reply Date: June 25, 2002

By the Assistant Chief, Audio Division:

1. The Commission has before it a Petition for Rulemaking filed by Chaparral Broadcasting, Inc., licensee of Station KLZY(FM), Powell, Wyoming. The petition requests four proposed changes in the FM Table of Allotments, Section 73.202(b) of the Rules. Petitioner proposes to reallocate Channel 223C from Powell, Wyoming, to Park City, Montana, as that community's first local aural service, and to modify Station KLZY's license accordingly. In order to allow that reallocation to occur, petitioner further proposes to substitute Channel 222C for Channel 223C at Miles City, Montana, and to modify the license for Station KKRY to specify operation on Channel 222C. If those proposals are granted, petitioner states that it will file the necessary applications to effectuate the reallocation of Channel 223C from Powell to Park City and, further, that it will reimburse the licensee of Station KKRY for its reasonable costs of changing its channel of operation to Channel 222C. Finally, petitioner proposes the allotment of Channel 221C to Byron, Wyoming, as a first local aural service. Petitioner states that it will apply for the requested channel, if granted.

2. We believe that these proposals warrant consideration because they comply with our technical requirements and could serve the public interest. Channel 223C could be allotted to Park City consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction of 23.8 km (14.8 miles) southeast of Park City.¹ Park City is depicted on 2000 Census data maps as a Census Designated Place with a population of 870 persons. Neither Powell, the current community of license, nor Park City, the proposed new

¹ The proposed coordinates for Channel 223C at Park City are 45-32-24 NL and 108-38-34 WL.

community, is well served with five or more aural broadcast services. One AM and three FM stations are licensed to Powell: KPOW(AM), KUWP(FM), KCGL(FM), and KLZY(FM) (petitioner's facility). Reallotment of Channel 223C from Powell to Park City would provide a first local aural broadcast service to Park City, entitling Park City to a first priority under the Commission's FM allotment priorities. *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). In order to determine whether application of that priority is warranted, we shall conduct a *Tuck* analysis to determine whether Park City is an independent community or one which is interdependent with the nearby Billings, Montana Urbanized Area. *See Fay and Richard Tuck*, 3 FCC Rcd 5374 (1988). In addition, because petitioner proposes to relocate Station KLZY's transmitter site in order to serve Park City, a gain/loss study will be necessary.

3. The proposed substitution of Channel 222C for Channel 223C at Miles City, Montana, would not create a change in the service provided nor in the coordinates for the transmitter site. There are no interference conflicts with the proposed substitute channel at the current licensed site.²

4. Channel 221C could be allotted to Byron consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction of 44.7 km (27.7 miles) southwest of Byron.³ Byron is depicted on 2000 Census data maps as a town with a population of 557 persons. The allotment of Channel 221C to Byron would afford a first local aural service to Byron.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Miles City, Montana	223C	222C
Park City, Montana	---	223C
Byron, Wyoming	---	221C
Powell, Wyoming	223C, 211C3, 281C	211C3, 281C

6. Comments, reply comments, counterproposals and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in

² The coordinates for Miles City would not change under petitioner's proposal. They are 46-24-04 NL and 105-39-06 WL.

³ The center city coordinates for Byron are 44-47-47 NL and 108-30-21 WL, and the proposed site-restricted coordinates for Channel 221C at Byron are 44-38-08 NL and 109-01-20 WL.

paragraph 2 of the Appendix before a channel will be allotted.

7. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **June 10, 2002**, and reply comments on or before **June 25, 2002**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

David Tillotson
Law Offices of David Tillotson
4606 Charleston Terrace, N.W.
Washington, D.C. 20007-1911

8. Parties must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 Fed.Reg. 11549 (February 9, 1981).

10. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution

of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

11. In order to proceed with our analysis of the proposals set forth in the Petition for Rulemaking and to resolve this proceeding, it is further necessary to issue an *Order to Show Cause* directed to Cenger Broadcasting Corporation to show cause why its Station KKRY license should not be modified to specify operation on Channel 222C in lieu of Channel 223C at Miles City. Section 316(a) of the Communications Act of 1934, as amended, permits us to modify a license or construction permit if such action is in the public interest. Section 316(a) requires that we notify the affected stations of the proposed action, the public interest reasons for the action, and afford at least 30 days to respond. This procedure is now set forth in Section 1.87 of the Commission's Rules. *See Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987). In this instance, the substitution of Channel 222C at Miles City will accommodate the Station KLZY reallocation, making possible a first local aural service for Park City, Montana. The substitution proposed in this proceeding will also result in a net gain in service. We consider these to be significant public interest benefits.

12. The Station KKRY license at Miles City can be modified to specify operation on Channel 223C at its currently authorized transmitter site.⁴ The petitioner has agreed to reimburse Cenger Broadcasting Corporation for the reasonable costs incurred in connection with the change of the Station KKRY channel.

13. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Cenger Broadcasting Corporation, licensee of station KKRY, Miles City, Montana, SHALL SHOW CAUSE why its license should not be changed to specify operation on Channel 222C in lieu of Channel 223C.

14. Pursuant to Section 1.87 of the Commission's Rules, Cenger Broadcasting Corporation may, no later than May 20, 2002, file a written statement showing with particularity why its license should not be modified as proposed in this *Order to Show Cause*. The Commission may call upon the licensee to furnish additional information. If the licensee raises a

⁴ See ¶3, *supra*.

substantial and material question of fact, a hearing may be required to resolve such questions of fact pursuant to Section 1.87 of the Rules. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, the licensee will be deemed to have consented to a modification as proposed in this Order to Show Cause and a final Order will be issued if the modification is found to be in the public interest.

15. IT IS FURTHER ORDERED, That a copy of this Order to Show Cause shall be sent BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following:

Cenger Broadcasting Corporation
Post Office Box 1426
Miles City, Montana 59301

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos, Assistant Chief
Audio Division
Office of Broadcast License Policy
Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed

with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.